

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ARBOR NETWORKS, INC.,)	
)	
Plaintiff,)	
)	C.A. No. 12-11322
v.)	
)	
WILLIAM E. RONCA III, RICHARD SHIRLEY,)	
DOUGLAS FLEMING, JAMES GILL, JAMES)	
NEEL, JASON MCEACHIN, MICHAEL L.)	
PORTER, ANDREW HENKART, PAUL)	
SCANLON, MICHAEL HOLLYMAN, and)	
RED LAMBDA, INC.,)	
)	
Defendants.)	
_____)	

PLAINTIFF’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVITS

Pursuant to Local Rule 7.1(B)(3), the Plaintiff Arbor Networks, Inc. (“Arbor” or “Plaintiff”) hereby respectfully requests leave from this Court to file supplemental affidavits in support of its Motion for Temporary Restraining Order, Motion for Preliminary Injunction, and Motion for Leave to Take Expedited Discovery (“Arbor’s Motions”). Copies of these affidavits are attached hereto as Exhibits A-D. As reasons for its motion, Arbor states as follows:

1. Arbor inadvertently filed the supplemental affidavits without requesting leave from this Court to so file. Accordingly, Arbor now seeks leave from this Court to allow it to file the supplemental affidavits.

2. Arbor seeks to file an affidavit from Jim Vaughn (“Vaughn”), the managing director of Intelligent Discovery Solutions, an e-discovery consulting firm that conducted forensic analysis of the Arbor-issued computers of defendants James Gill (“Gill”) and Jason McEachin (“McEachin”), as well as a USB device that McEachin provided to his attorney.

3. With respect to Vaughn's statements regarding the analysis of Gill's and McEachin's Arbor-issued computers, these allegations were already included in Arbor's Verified Complaint, which was filed prior to the date that Arbor's Motions were filed.

4. With respect to Vaughn's statements regarding the analysis of McEachin's USB device, counsel for McEachin only provided the USB device to counsel for Arbor late in the afternoon on July 27, 2012, the day that the initial hearing on Arbor's Motions was scheduled. This USB device should have been provided to Arbor's counsel well in advance of the hearing.

5. Upon receiving the USB device, Arbor immediately sent it to Vaughn for analysis. Arbor did not receive the results of Vaughn's analysis until late last week, at which time the parties were engaged in settlement discussions that ultimately failed on Saturday, August 4, 2012. Defendants should not benefit from their own delay in providing the USB device to Arbor's counsel.

6. With respect to the Affidavit of Colin Doherty, the Supplemental Affidavit of Carlos Morales, and the Supplement Affidavit of Chris Conry (the "Affidavits"), Arbor states that upon receiving Defendants' papers filed in opposition to Arbor's Motions, it immediately began to compile information to rebut allegations set forth therein and prepared the Affidavits accordingly. However, prior to the Affidavits being finalized, as noted above, the parties engaged in settlement discussions. Following the breakdown of settlement discussions late on Saturday, August 4, 2012, Arbor prepared to finalize and file the Affidavits the following business day.

WHEREFORE, Plaintiff Arbor Networks, Inc. respectfully requests that this Court ALLOW its Motion For Leave To File Supplemental Affidavits.

Respectfully submitted,

ARBOR NETWORKS, INC.

By its attorneys,

/s/ Dawn Mertineit

Katherine E. Perrelli (BBO #549820)

Dawn Mertineit (BBO #669988)

SEYFARTH SHAW LLP

World Trade Center East

Two Seaport Lane, Suite 300

Boston, Massachusetts 02210

(617) 946-4800

Dated: August 6, 2012

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for Arbor spoke with counsel for Defendants in an effort to resolve or narrow the issues contained in the present motion. The parties were unable to do so, necessitating the present motion.

/s/ Dawn Mertineit

Dawn Mertineit

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants, as identified on the Notice of Electronic File ("NEF"), and paper copies will be sent to those indicated as non-registered participants on August 6, 2012, by first class mail.

/s/ Dawn Mertineit

Dawn Mertineit